

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 04, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRYAN PAUL HERNANDEZ (*also*
known as Selene Violet Henderson),
Plaintiff,
v.

No. 2:24-CV-00151-SAB

**ORDER DENYING MOTION FOR
RECONSIDERATION**

ERIC CARPENTER, DENNIS
WETZLER, JANE
SCHOLLMEYER, and JENNIFER
SOMERLOTT,
Defendants.

Before the Court is Plaintiff's Motion for Reconsideration of the Order Dismissing Action, along with supplemental materials and amendments. ECF Nos. 11, 11-1, 12 and 14. In the interim, Plaintiff also filed a Notice of Appeal, ECF No. 13. Plaintiff, a civilly committed detainee, is proceeding *pro se* and *in forma pauperis*, and is currently housed at the Eastern State Hospital. Defendants have not been served. The Motion was considered without oral argument on the date signed below.

1 Plaintiff contends that the Order dismissing this action with prejudice was
 2 “clearly in error” and Plaintiff wishes to question the “third claim.” ECF No. 11 at
 3 1. Plaintiff asserts there are “three major cases [that] establish the
 4 unconstitutionality of restricting violent media for both minors and adults,” and
 5 Plaintiff’s “claim about mature video games” should be allowed to proceed. *Id.* at
 6 1–2.

7 **MOTION FOR RECONSIDERATION**

8 Motions for reconsideration are generally disfavored and should not be
 9 granted, “absent highly unusual circumstances, unless the district court is presented
 10 with newly discovered evidence, committed clear error, or . . . there is an
 11 intervening change in the controlling law.” 389 *Orange St. Partners v. Arnold*, 179
 12 F.3d 656, 665 (9th Cir. 1999). Reconsideration is an “extraordinary remedy, to be
 13 used sparingly in the interests of finality and conservation of judicial resources.”
 14 *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).
 15 “Whether or not to grant reconsideration is committed to the sound discretion of
 16 the court.” *Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian*
 17 *Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

18 Plaintiff asserts a First Amendment right to mature media content while
 19 civilly detained at a state hospital. Plaintiff attaches two articles authored by Dr. C.
 20 Ferguson, the second of which concludes: “Consistent with newer theories of
 21 media effects, individual experiences may vary considerably. It is less that media
 22 have no effect, and more that effects are idiosyncratic and user driven rather than
 23 content driven. As such, rather than a one-size-fits-all recommendation for media,
 24 clinicians may wish to tailor their recommendations to the needs of the individual
 25 patients or families.” ECF No. 11-1 at 9.

26 Here, Plaintiff has presented no facts from which the Court could infer that a
 27 restriction on Plaintiff’s access to mature media content is not reasonably related to
 28 legitimate mental health treatment goals. *See e.g., Turner v. Safley*, 482 U.S. 78

1 (1987). While Plaintiff may question the veracity of prior studies linking violent
2 media to aggression, Plaintiff has not shown that any restrictions tailored to
3 Plaintiff's treatment constitute "a substantial departure from accepted professional
4 judgment, practice, or standards." *See Youngberg v. Romeo*, 457 U.S. 307, 323
5 (1982).

6 Plaintiff has not presented newly discovered evidence, shown the Court
7 committed clear error, or argued that there has been an intervening change in the
8 controlling law. *See 389 Orange St. Partners*, 179 F.3d at 665.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. Plaintiff's Motion to Reconsider, ECF No. 11, is **DENIED**.

11 2. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
12 this Order would not be taken in good faith.

13 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
14 and provide a copy to Plaintiff. The file shall remain closed.

15 **DATED** this 4th day of November 2024.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

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Stanley A. Bastian
Chief United States District Judge